

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TOMIAS LEE ROBINSON,

Defendant-Appellant.

UNPUBLISHED

November 21, 2013

No. 311231

Oakland Circuit Court

LC No. 2012-240820-FH

Before: FORT HOOD, P.J., and SAAD and BORRELLO, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of conspiracy to deliver and/or possess with intent to deliver less than 50 grams of heroin, MCL 333.7401(2)(a)(iv). He was sentenced as a fourth habitual offender, MCL 769.12, to a prison term of two to 20 years. Defendant appeals by right, and we affirm.

I. FACTUAL BACKGROUND

Members of the Oakland County Narcotics Enforcement Team (NET) began investigating Charles Murphy, Charles Russell, and Jeffrey Willingham for transporting heroin from Detroit to Oakland County. After conducting surveillance in Pontiac, the officers followed Murphy and Russell, who were driving a GMC Jimmy, from Pontiac to the Roanoke Apartments in Detroit, where they observed Murphy walking to a parked van and talking to the van driver. The driver, who was Willingham, handed a white plastic grocery bag to Murphy. Murphy returned to the Jimmy with the bag, and Murphy and Russell drove off, with the officers following. The Jimmy stopped at a Mobile gas station on Schoolcraft in Detroit. Murphy got out of the vehicle with the white grocery bag and put it in the back of the truck. The officers then followed the Jimmy to Bloomfield Township, where a uniformed police officer initiated a traffic stop. A search of the Jimmy revealed the white grocery bag in a brown briefcase in the back of the truck. One of the officers, Detective Ferguson, field tested the substance in the white grocery bag and found it to be 33 grams of heroin.

The Oakland County NET officers obtained two warrants for Willingham's arrest for possession of heroin and a suspended license. The officers began looking for Willingham in Detroit. After they located Willingham, he was arrested and found to have on his person \$4,100 in cash, three sets of keys, and a cell phone. Officers took the keys to the Roanoke Apartments with a records search warrant to determine which apartment was Willingham's. While Detective

Wilson was trying to open apartment 204 with the key, defendant opened the door to apartment 203 and spoke to Wilson. Defendant initially denied that Willingham lived in the apartment, but later admitted that they lived there, and gave the officers permission to search the apartment.

With valid search warrants, the officers searched the apartment and found heroin, cocaine, and marijuana. Defendant was arrested for the narcotics found in his apartment. He was interviewed at the Oakland County jail and gave a statement to the officers. Defendant said the heroin and cocaine in the apartment belonged to Willingham, but defendant acknowledged that he sold drugs for Willingham. Defendant also admitted that the drugs were distributed from Detroit to Pontiac. Subsequently, an Oakland County jury convicted defendant of conspiracy to deliver and/or possess with intent to deliver less than 50 grams of heroin.

I. VENUE

On appeal, defendant argues that venue in Oakland County was improper because his statement indicated only that defendant sold drugs for Willingham, and there was no evidence of defendant's participation in a conspiracy in Oakland County. In reviewing a determination of venue in a criminal case, this Court reviews the record de novo to determine whether a rational trier of fact could have found that venue was proven beyond a reasonable doubt. *People v Huffman*, 266 Mich App 354, 362; 702 NW2d 621 (2005).

At trial, the defense and prosecution both relied on *People v Meredith (On Remand)*, 209 Mich App 403; 531 NW2d 749 (1995). In that case, the defendant was arrested in Oakland County for speeding when she was driving from Saginaw to Detroit. The defendant regularly traveled from Saginaw to Detroit to purchase cocaine for her cousin and then returned to Saginaw with the cocaine and delivered it to her cousin. *Id.* at 406. The trial court ruled that venue in Oakland County was improper because the conspiracy was formed in Saginaw, and the act of driving through Oakland County did not constitute a crime and was not essential to the conspiracy agreement. *Id.* at 406-407. This Court reversed, noting that in a conspiracy case venue is appropriate in any jurisdiction in which an overt act in furtherance of the conspiracy occurred, no matter how insignificant the act. *Id.* at 409. Driving through the county was sufficient, and venue in that case was proper in Oakland County. *Id.*

In the instant case, Murphy and Russell drove from Oakland County to Detroit to obtain drugs from Willingham. They returned to Oakland County with 33 grams of heroin. Willingham was arrested two weeks later, and after a search of his person, the officers obtained keys, which led them to his apartment in Detroit. Defendant was in Willingham's apartment in Detroit and admitted that he lived there with Willingham. The officers found more heroin, cocaine, and items consistent with the distribution of cocaine and heroin in the apartment. Defendant admitted selling drugs for Willingham and having knowledge that the drugs were being sold in Pontiac.

Direct proof of the agreement underlying the conspiracy is not required. *People v Cotton*, 191 Mich App 377, 393; 478 NW2d 681 (1991). "It is sufficient that the circumstances, acts, and conduct of the parties establish an agreement." *Id.* The evidence presented at trial established an agreement among the parties to transport drugs from Detroit to Oakland County with the intent to distribute. Murphy and Russell were caught with heroin in Oakland County,

which they received from Willingham in Detroit. Defendant was also in possession of heroin and cocaine in an apartment that he shared with Willingham in Detroit, and he admitted knowledge of the transport of the drugs to Oakland County. According to *Meredith*, defendant's possession of the drugs and distribution paraphernalia in Detroit, considered with Russell and Murphy's transport of the drugs to Oakland County, constitute overt acts in the conspiracy to distribute drugs from Detroit to Oakland County. *Meredith*, 209 Mich App at 409. Accordingly, defendant's argument that venue was improper in Oakland County is without merit.

III. PROSECUTORIAL MISCONDUCT

Defendant also alleges he was denied a fair and impartial trial by prosecutorial misconduct. Defendant argues that the prosecutor improperly vouched for Detective Ferguson's credibility and implied knowledge of evidence not presented when she stated that Ferguson would not risk his job by lying. This Court reviews preserved prosecutorial misconduct claims on a case-by-case basis and decides whether the prosecutor's comments, taken in context, deprived the defendant of a fair and impartial trial. *People v McElhaney*, 215 Mich App 269, 283; 545 NW2d 18 (1996). The defendant bears the burden of establishing that prosecutorial misconduct results in a miscarriage of justice. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008).

A prosecutor may not vouch for the credibility of a witness by implying that she has special knowledge concerning the witness's truthfulness or by stating her own opinion regarding a witness's honesty. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). During closing arguments, a prosecutor may comment on her own witness's credibility, especially if there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004).

Here, defense counsel questioned why Ferguson did not videotape his interview with defendant. Defense counsel also questioned whether defendant ever made any of the admissions contained in his statement. Without those statements, defense counsel argued, there was nothing to tie defendant to a conspiracy to deliver drugs to Oakland County. In response to this argument the prosecution stated:

Now, defense [counsel] mentioned in his opening statement that the — his client didn't make a statement, and that you were going to find that his client didn't make a statement and the officers must be lying. When you determine the credibility, not only think of what the officers said and what they did, think as the Judge is going to tell you, what reason do they have to make that up? Absolutely no reason. And as Detective Ferguson indicated to you, he's been doing this for twenty five and a half years. I doubt that he would risk his career over taking an oath —

* * *

Detective Ferguson's been an officer for twenty five and a half years, and so ask yourself, did Detective Ferguson get up here and take an oath and lie to

you in this particular case? For what reason? He indicated to you he doesn't — he doesn't get a bonus in his paycheck for getting an arrest.

Considering the prosecution's statements in the context they were made, the prosecutor did not improperly vouch for Ferguson's credibility. Defense counsel implied that Ferguson manufactured defendant's statement, and the prosecutor countered by arguing to the jury that Ferguson had no reason to lie. The prosecutor did not imply that she had special knowledge regarding Ferguson's credibility, and she did not state her own opinion or belief regarding his truthfulness. In addition, the prosecutor did not urge the jury to suspend its own judgment out of deference to her or Detective Ferguson. *People v Whitfield*, 214 Mich App 348, 352-353; 543 NW2d 347 (1995).

When defense counsel objected after the prosecutor stated, "I doubt that he would risk his career over taking an oath," the prosecutor stated that she would drop that line of argument and move on, which she did. In addition, the trial court instructed the jury that the testimony of police officers was to be judged by the same standards used to evaluate the testimony of any of the other witnesses. Accordingly, defendant failed to meet his burden of demonstrating prosecutorial misconduct that resulted in a miscarriage of justice. *Brown*, 279 Mich App at 134.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Henry William Saad
/s/ Stephen L. Borrello